

Abuse of Halal Certificate: Legal and Procedural Analysis

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Abstract: The issues of halal logo cover the aspects of slaughtering, storage, display, preparation, hygiene and sanitation. It includes food and non-food category where most of technical preparations are not tackled by local religious enforcement. The lack of procedures and manpower lead these problems remain unchanged and it looks like the legal provision of abusing the halal logo is irrelevant. Furthermore it is more complicated since the Malaysian law already excludes the non-Muslims from being arrested whereas most of the food manufacturers and daily products are dominated by them. However, the roles from Muslim non-government organizations (NGO) are still important to strengthen the enforcement besides creating better social awareness on shariah compliance. This article will discuss the legal constraints, practical alternatives and the need of political will in order to overcome this weaknesses.

Key words: Halal requirement • Shariah Criminal Procedure • Unclear enforcement

INTRODUCTION

In the context of Malaysia, the issue of misuse of *halal* certificate is not a novel issue anymore. This could be due to the fact that halal food and products receive popular demand in Malaysia as almost 70% of the Malaysian citizens are Muslims who wish to consume food products and use daily products that are in accordance with shariah principle. However, such a popular demand has caused unscrupulous companies and individuals to misuse *halal* logo and certificate so as to gain more sales and profits. Halal originates from the Arabic word *halla*, *yahillu*, *hillan*, *wahalalan* which means allowed or permissible by the shariah law [1]. The halal certification scheme is divided into several categories, that is food product or beverages or food supplement; food premises or hotel; consumer goods; cosmetic and personal care; slaughterhouse; pharmaceutical; and logistic.

Obtaining & Renewing Halal Certification: There are conditions to be fulfilled before obtaining the halal certification. Firstly, the applicant or manufacturer shall be register with the Companies Commission of Malaysia (SSM) or Malaysia Co-operative Societies Commission or other government agencies. Secondly, the applicant or

manufacturer must hold a business license from the Local Authorities (PBT) or testimonial from government agency. Thirdly, the business of the applicant or manufacturer must be in full operation before an application is made. Fourthly, the applicant or manufacturer shall produce and handle only halal products and be in compliance with the specified halal standard. The applicant or manufacturer must also ensure that the sources for ingredients are halal and choose suppliers who supply halal materials or have obtained recognized halal certificate. All types of products or menu which are produced by the factory or premise are required to fulfill the condition and apply for the certificate. The applications for repackaging must be accompanied with recognized halal certificate for the said products [2].

However, there are applications which are not eligible for the halal certificate such as non-halal products, (notwithstanding products which do not have referenced standard or guideline which fulfills the criteria of having direct contact with food; there being uncertainty on the sources of manufacturing materials or ingredients may be from halal or non-halal sources; use as processing aids in food manufacturing; does not raise confusions if it is certified i.e water filter, detergent, gas may be considered), any application with no standard reference or guideline; companies that produce and distribute halal and non-halal

products; usage of similar branding for halal and non-halal products; product or food premise which gives negative implication towards religion and social; natural products which does not involve any processing such as fresh fish, fresh vegetables, fresh egg and the like; fertilizer and animal feed; crockery; paper; products which use the name or synonymous names with non-halal products or confusing terms i.e. ham, *bak kut teh*, bacon, beer and the like; local and imported finished products which are relabeled without undergoing any processes in Malaysia; kitchen or food premise or food catering services which prepare *haram* cuisine as decreed in shariah law; products which are in the early stages of research and development; products that can lead to deviation of *aqidah*, superstition and deception; and hotel with kitchen that prepares pork based menu [3].

One of the crucial issues is the renewal of license. Therefore the procedure shall be discussed beforehand. The first stage consists of application and fee. The application procedure for halal certification is that all applications shall be submitted online via MYeHALAL at www.halal.gov.my. Next, all supporting documents shall be submitted to Malaysian Islamic Development Department (JAKIM) or State Islamic Religious Department (JAIN) after the application form has been submitted online. There is a checklist which may be referred to by the applicant as they must complete the application forms by furnishing all the information required and a copy of the following certificates or documents must be enclosed together with it. A special folder "Halal Certification Certificate" for keeping all relevant documents should be provided. It will come in handy when an inspection is carried out at the premise. The application shall be submitted at least three months before the expiry date of the certificate for renewal purposes.

Incomplete application will be automatically rejected by MYeHALAL, the applicant will be notified by email accordingly while completed application will receive a letter requesting payment for certification fee. A notice for service charge will be mailed to the applicant. The certification fee is valid for two years except for slaughterhouse whereby the duration is for one year only. The fee is fixed according to Malaysia Halal Certification scheme, industrial categories and subject to changes. The payment of fee may be made in the form of postal or money order or bank draft or online payment payable to JAKIM or State Islamic Religious Council (MAIN) or JAIN. Payment of the fee made is not refundable.

After the on-line application, processing of documents and payment of fee, the next stage is site audit; sampling and analysis, if necessary; and audit report. The auditor shall be those who are not in the Halal Certification Panel. A minimum of two officers who are competent in Islamic education and technical matters shall carry out the auditing. The site audit will verify the Halal status of ingredients, the processing and storage, Halal internal management, labeling and the quality assurance which will be compiled in the Audit Report. The auditors may take sample for analysis at the site inspection to confirm the content of products. The auditor has the right to access into the entire premise as the auditor is authorized to snap photos for evidence purposes; a copy of the audit report shall be given to the applicant for action; and auditor can conduct follow-up audit after the corrective action has been implemented for verification purpose. A re-audit is only carried out once and is conducted solely based on the decision of the Halal Certification Panel.

Finally, the last stage is approval and certification. The Audit Report will be reviewed by JAKIM Internal Committee before it can be recommended for approval by JAKIM Halal Certification Approval Panel. Both the Internal Committee and the Approval Panel consist of experts in Shariah and Technical matters. The Approval Panel has the final decision to reject or approve any application. All inspection for monitoring and enforcement are to be conducted without advanced notice based on Manual Procedure for Malaysia Halal Certification (Third Revision) 2014 and other regulations currently enforced. After the inspection, a copy of the Malaysia Halal Certification Monitoring Notice will be issued by the Inspection Officer to the company [4].

There are four types of inspection which are scheduled inspection, enforcement inspection, follow-up inspection and inspection based on complaint. Scheduled inspection is a continuous and planned inspection on Malaysia Halal Certificate holders to verify its compliance to the requirements in terms of certification, use of logo and halal standard. Enforcement inspection is an inspection conducted by JAKIM / MAIN / JAIN together with other enforcement agencies as a result of public complaint or from schedule inspection activities. Follow-up inspection is an inspection on any company which failed to comply with the Halal Certification Procedures based on the earlier inspections. Whereas inspection based on complaint is conducted after receiving a public complaint regarding to abuse of halal logo or certificate or doubts on products and consumer goods, food premises,

slaughter houses, logistics or companies which has been awarded Malaysia Halal Certification, use of logo or halal term [5].

The prosecution process will be conducted by the Ministry of Domestic Trade, Co-operatives and Consumerism (KPDNKK) or other enforcement agencies based on the input from JAKIM / MAIN / JAIN about halal matters. JAKIM / MAIN / JAIN will be summoned as witness in trial processes in court and the decision of the court may be announced by JAKIM / MAIN / JAIN for public information [6].

Prosecuting Abuser – A Conflicting Approach in Malaysia: As of the production of this writing, there is no reported case that revolves around the law of abuse on Halal logo or sign. Hence, the writing on this issue is purely academic and reference is made to the enacted laws which are supposed to deal with the matter. According to section 38 of Shariah Criminal (State of Selangor) Enactment 1995 (hereinafter known as Selangor Enactment) “Any person who displays, on any food or drink which is not *halal*, any sign which indicates that such food or drink is *halal* shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.”

In short, whoever displaying the *Halal* sign on non-*halal* food or drink shall be found guilty of an offence. ‘Person’ here refers to the definition of ‘person’ under s 66 of Interpretation Act 1948 and 1967 which includes ‘person’ as anybody of persons, corporate or unincorporated. Hence, legally, any living human and company can be charged under this section. However, the Shariah Courts lack of jurisdiction to deal with any person who does not profess the religion of Islam. The issues here revolve around the offence committed by non-Muslims, whether as a person or a company as there is no distinction among ‘*Muslim*’ companies while there are ‘*Bumiputra*’ companies [7].

In situation where it involves a non-Muslim and companies, the law governing the abuse of *Halal* sign no longer falls within the ambit of the said Shariah Criminal (State of Selangor) Enactment. It would fall under the Trade Descriptions Act 2011 (hereinafter to be known as TDA). Under this act, few orders relating to *halal* had been made by the Minister. The relevant Orders for the discussion are:

- Trade Descriptions (Definition of *Halal*) Order 2011 made under section 28 of TDA, amended in 2012 (hereinafter known as Definition Order); and

- Trade Descriptions (Certification and Marking of *Halal*) Order 2011 made under section 29 of TDA amended in 2012 (hereinafter known as CM Order).

It should be noted that the TDA did not exclude their power and jurisdiction to charge Muslims as well, thus Muslim in Selangor maybe charged under the Selangor Enactment or TDA.

Under Definition Order, few important definitions have been provided under Order 2, namely:

- "Hukum Syarak" means the Islamic laws according to Mazhab Syafii, or the Islamic laws in any one of the other mazhabs such as Hanafi, Maliki or Hanbali which are approved by the Yang di-Pertuan Agong to be in force in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Penang, Malacca, Sabah and Sarawak or the Ruler of any State to be in force in the respective State;
- "Fatwa" means any religious decree which is verified by an authority related to the religion of Islam;
- "Food" includes every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, preservation, of any food or drink for human consumption and includes confectionary, chewing substances and any ingredient of such food, drink, confectionary or chewing substances; and
- "Services in relation to the food or goods" includes the transporting, storing and processing raw materials, serving and retailing of such food or goods.

***Halal* Had Been Defined in Order 3:** *Halal* and other expression defined

- When food or goods are described as *halal* or are described in any other expression to indicate that the food or goods can be consumed or used by a Muslim, such expression means that the food or goods:
 - Neither is nor consists of or contains any part or matter of an animal that is prohibited by Hukum Syarak and fatwa for a Muslim to consume or that has not been slaughtered in accordance with Hukum Syarak;
 - Does not contain anything which is impure / najis according to Hukum Syarak and fatwa;
 - Does not intoxicate according to Hukum Syarak and fatwa;

- Does not contain any part of a human being or its yield which are not allowed by Hukum Syarak and fatwa;
- Is not poisonous or hazardous to health;
- Has not been prepared, processed or manufactured using any instrument that is contaminated with impure according to Hukum Syarak and fatwa; and
- Has not in the course of preparing, processing or storing been in contact with, mixed, or in close proximity to any food that fails to satisfy subparagraphs (a) and (b).
- When services in relation to the food or goods are described as halal or are described in any other expression to indicate that the services can be used by a Muslim, such expression means that the services in relation to the food or goods are carried out in accordance with Hukum Syarak [8].

It should be noted that similarly with the Selangor Enactment, it is also an offence to mislead or confuse consumers that the food is *halal* under Order 4 (1) of the Definition Order. Order 4 (2) explains that “For the purpose of subparagraph (1), representation or conduct includes the usage of the holy verse of Al-Quran or any matter or object in relation to the religion of Islam either in the premises in which such food is sold or in the container in which such food is supplied.”

According to Order 4 (3), the onus of proving one is innocent from the allegation falls on the accused. However, the punishment defers by a whole lot compared to the Selangor Enactment. Under Order 5 of the Definition Order:

Penalty “Any person who is guilty of an offence under this Order shall, on conviction, be liable--

- If such person is a body corporate, to a fine not exceeding five million ringgit and for a second or subsequent offence, to a fine not exceeding ten million ringgit; or
- If such person is not a body corporate, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both and for a second or subsequent offence, to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or both.

The Definition Order implicates a much wider and huge punishment for the abuse of the *halal* sign compared to the Selangor Enactment. It is submitted that

this Order serves better as a warning and deterrence to the general public as a whole. When an accused or offender faces a light maximum punishment of RM2000 or one year imprisonment or even both, the enactment falls short when TDA provides maximum punishment up to millions of dollars and three years of imprisonment.

The other relevant order in question is CM Order. Under this order, JAKIM and JAIN / MAIN are defined as ‘Authorised Body’. Order 3 of CM Order provides:

Competent Authorities: Malaysian Islamic Development Department (JAKIM) and the Islamic Religious Council in the respective States shall be the competent authorities to certify that any food, goods or services in relation to the food or goods is halal in accordance with the Trade Descriptions (Definition of Halal) Order 2011 [P.U. (A) 430/2011].

However, this Order only authorises JAKIM and JAIN / MAIN to certify the status of ‘*halal-ness*’ of the product or services, contrary to the popular believe that they are now the ‘authoritative body’ to enforce the law on abuse of *halal* sign. It is submitted that the said power to enforce the law on abuse of *halal* sign is not vested under Order 3 as the order did not provide them with any of those power.

Therefore, any certification shall only come from JAKIM or JAIN / MAIN and any other person or body who issue any sort of *halal* certification will be deemed invalid. For instances, private *halal* logo had been banned by *Majlis Agama Islam Selangor* (MAIS). The six companies that were banned involved were Bahtera Lagenda Sdn. Bhd., Islamic Food and Research Council (IFRC), SAS-H Consultancy, Perak Religious Officer Association, Halal Food Council S.E.A and IFANCA International [9].

It is therefore an offence to certify or supply or offer to supply any product which was not properly certified to be *halal* by the competent authorities. Order 8 of CM Order provides that:

Offence: Any person who--

- Certifies that any food, goods or services in relation to the food or goods is halal; or
- Supplies or offers to supply any food, goods or services in relation to the food or goods, in contravention of this Order, commits an offence and shall, on conviction, be liable--
 - If such person is a body corporate, to a fine not exceeding two hundred thousand ringgit and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; or

- If such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Hence, similarly with the Definition Order, the punishment imposed here in CM Order for the abuse of *Halal* sign is very heavy compared to the Selangor Enactment, although little being compared with the Definition Order's punishment.

It is submitted that under the TDA, it is an abuse of *halal* sign when a person or a company displays, misuse, certifies, supplies or offers to supply any product which is not *halal* or products which were 'supposed to be *halal*' but was not certified to be so by JAKIM or JAIN/MAIN. TDA does not concern with whether or not the subject matter is *halal* in actuality, but TDA is concerned with whether or not that product was certified to be *halal* by JAKIM or JAIN / MAIN. The official *halal* sign are reproduced below:



Halal sign as per First Schedule of CM Order: Referring to s 62 of TDA, it is clear that consent from the Public Prosecutor is required in order for any institution of any prosecution for any offences found under the TDA. Hence, it is submitted that, by the virtue of the maximum sentencing accorded to the Act and subsequent Orders found under TDA and the fact that the Public Prosecutor consent is paramount in any institution of an action, only the civil court have jurisdiction to try any case under the TDA.

It is submitted that even if the Public Prosecutor's consent is not required under the TDA, it is not logical to initiate an action in the Shariah Court as the maximum punishment that the Shariah Court can pronounce is way too low compared to the maximum sentences allowed in

TDA. It is further submitted that the punishment in TDA serves as a deterrence sentence for the public to understand and respect the fact that *halal* issue is of utmost important and it is not for any person to treat it lightly.

Therefore, the procedure required to be followed in cases involving non-Muslim, company, or at times if the Ministry of Domestic Trade, Co-operatives and Consumerism think fit, a Muslim as well, shall be the procedure as laid down in the Criminal Procedure Code instead of the Shariah Criminal Procedure (State of Selangor) Enactment 2003. Hence, the burden of proof in said cases will not be the standard beyond shadow of doubt as per Shariah but merely beyond reasonable doubt as per the Common Law adopted in the civil Evidence Law. Although it does not meet the standard of proving a criminal case in the Islamic point of view, it still serves the purpose to protect the sanctity of the *halal* insignia.

CONCLUSION AND RECOMMENDATIONS

In this last section, the authors wish to lay down several suggestions that can be carried out by the relevant authorities in view of the fact that the current legal system is either redundant or ineffective to curb the offence of misuse of halal certificate. It can be seen as follow:-

Shariah Interpretation Act: The issue here concerns about the conflicting definition of the choice of words in determining the applicability of a particular provision in Enactments as a whole, i.e.: person as discussed above. It is true that the Shariah Criminal Offences (State of Selangor) Enactment makes use of Interpretation Act 1948 & 1967 for any *lacuna* with the terms in the enactment. However, Shariah courts are not bound by the doctrine of *stare decisis*. Therefore, there are technically no limitations on the Judge's discretion to apply whichever definition they deem fit if they decide in such a way that they do not want to make use of previous judicial decisions, especially when dealing with interpretation by different State's Shariah Courts. Since Shariah Court's criminal jurisdiction derives from a federal act, there should be no problem for Shariah courts to have their own Interpretation Act. Hence, by enacting a national level law which can be used to govern all the Shariah Court in Malaysia, they can adopt a universal approach in deciding this kind of technicality issue.

Standardizing the Law on Abuse of Halal Sign: By standardizing the law, every state in Malaysia will have a

same set of law. Hence, easier reference between states can be done in order to have a fair judgment throughout the state. It is submitted that although each and every state has the autonomy to decide on their own religion matter, the same can be done together in, either in the Conference of Rulers or collaboration between state and state religions authorities to regulate the said offence [9].

Increasing Shariah Court Power and Jurisdiction: The biggest problem here is the prosecution of a company in a Shariah Court. It is submitted that a non-Muslim shall not be an issue as they follow a different set of law all together and they do not enjoy the benefit of a Muslim. However, a company who self-proclaim them to be Shariah-compliance reaps benefits from the 'Islamic-Concept'. Hence, it is unfair and unjust that the Shariah Courts do not have jurisdiction to try such entity that take advantages of the religious aspect. Hence, Shariah Court should be entitled to try those 'Islamic' companies. Perhaps, it is time where Shariah Courts (Criminal Jurisdiction) Act 1965 should be amended to include such power.

Improving Religious Enforcement Officer Qualification: It is submitted that the minimum requirement to work with Selangor Islamic Religious Department (JAIS) is too low. According to the recent job vacancy offered by JAIS, besides being an Education Officer Grade (DG41) that requires a degree with the relevant field, the rest of the job can be filled with any person with qualification ranging from *Penilaian Menengah Rendah* – PMR or Lower Secondary Assessment) up to Pre-University qualification (STPM, STAM, Diploma or equivalent). This low entry requirement hinders the committee to perform at a higher level, especially with enforcement issue as most of the enforcement matter require a high understanding on procedure and rules of law. Unless an office is trained in such a field, it will cause hindrance and draw back in the entire process [10].

Repealing s 38 of Shariah Criminal Offences (State of Selangor) Enactment: It is submitted that the said provision in the Enactment does not serve as a deterrence compared to the Orders made under TDA. The difference between the punishments is just too wide and offenders would abuse the Enactment by opting to be tried under the Enactment to avoid heavy sentencing and punishment. As this offence relates to commercial crimes, offenders usually make huge sums out of the abuse of *halal* logo. Hence, a RM2000 fine or one year imprisonment is a luxury being compared with hundreds

of thousands up to millions of ringgit worth of fine and several years of imprisonment. Unless the punishments under the Enactment are enhanced, it is submitted that the Enactment would not serve the deterrence purpose it originally had in mind [11].

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